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Budapest

Council of Europe
Committee of Ministers

Avenue de l'Europe
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Ref: Implementation of the Szél v. Hungary (Judgement of 7 June 2011; Application no.:30221/06) and István Gábor Kovács v. Hungary (Judgement of: 17 January 2012; Application no.: 15707/10) judgements

Dear Madams and Sirs,

The Hungarian Helsinki Committee (HHC) is a leading human rights organisation in Hungary and in Central Europe. The HHC monitors the enforcement of human rights enshrined in international human rights instruments, provides legal defence to victims of human rights abuses by state authorities and informs the public about rights violations. The HHC's main areas of activities are centred on protecting the rights of asylum seekers and foreigners in need of international protection, as well as monitoring the human rights performance of law enforcement agencies and the judicial system. It particularly focuses on the conditions of detention and the effective enforcement of the right to defence and equality before the law.

For almost 20 years the HHC has been running a detention monitoring program. Since 1995 the organization has carried out 1237 monitoring visits at police jails, 48 visits at penitentiary institutions and also made 51 inspections at places of immigration detention. The HHC published two books summarising the findings of the detention program[1] and submitted numerous applications to various international forums (CPT, UNWGAD, CPT, SPT, UPR, etc.) in related subject matters. The HHC lawyers have litigated cases related to the conditions of and treatment in detention in Hungarian prisons both before domestic forums and the European Court of Human Rights (see e.g. the cases Engel v. Hungary, Application no.: 46857/06, and Csüllög v. Hungary, Application no.: 30042/08, Varga v. Hungary, Application no.: 14097/12 – pending).

[1] *Presumption of Guilt – Injurious Treatment and the Activity of Defense Counsels in Criminal Proceedings against Pre-trial Detainees*, Hungarian Helsinki Committee, Budapest, 2004, available at: http://helsinki.hu/en/presumption-of-guilt-injurious-treatment-and-the-activity-of-defense-counsels-in-criminal-proceedings-against-pre-trial-detainees-2004; and *Double Standard – Prison Conditions in Hungary*, Hungarian Helsinki Committee, Budapest, 2002.

With reference to the Szél v. Hungary and István Gábor Kovács v. Hungary judgements of the European Court of Human Rights (ECtHR) and the action report on the implementation of the judgements submitted by the Government of Hungary, the HHC respectfully submits the following recommendations and observations.

1. The judgements concerned by the present communication have prescribed comprehensive measures to be taken by the Government of Hungary: "Finally, mindful of the fact that the seriousness of the problem of overcrowding and of the resultant inadequate living and sanitary conditions in Hungarian detention facilities has been acknowledged by the domestic authorities (see Szél v. Hungary, no. 30221/06, § 8, 7 June 2011), the Court considers that an effective remedy responding to this issue could be offered by taking the necessary administrative and practical measures. In the Court's view, the authorities should react rapidly in order to secure appropriate conditions of detention for detainees." (see István Gábor Kovács v. Hungary, no. 15707/10, § 27, 17 January 2012)

2. In its action plan submitted on 22 April 2013 to the Committee of Ministers overseeing the implementation of the ECtHR judgments, the Government mentions three means to achieve the reduction of overcrowding amounting to Article 3 treatment:
   a) the balancing program of the National Prison Administration (NPA),
   b) the construction of new prisons and/or prison units or renovation (re-activating) of existing old ones and
   c) the introduction of new ("restitutive work") and the improvement of existing ("house arrest") alternative measures.

3. The Government concludes in the action plan "that the measures adopted have fully remedied the consequences for the applicants of the violation found by the Court in their respective cases and the measures planned are adequate and sufficient for preventing similar violations in the long term and therefore Hungary has complied with its obligations under Article 46, paragraph 1 of the Convention."

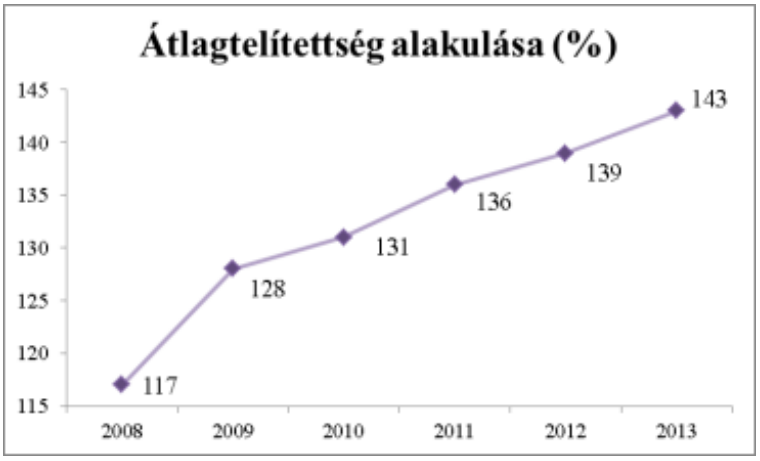
4. Contrary to the declaration of the Government of Hungary, the HHC is convinced that governmental measures adopted are insufficient to comply with the requirements set out in the judgement referred under 1 §. The rate of overcrowding is still on the rise; furthermore, the Government has taken restricted action to mitigate prison overcrowding and has also adopted measures which further aggravate the situation in the Hungarian prison system.

I. The constantly rising rate of overcrowding

5. The rate of overcrowding has been constantly increasing year by year. According to official information provided annually by the National Prison Administration (hereinafter: NPA) the general average overcrowding rate was:

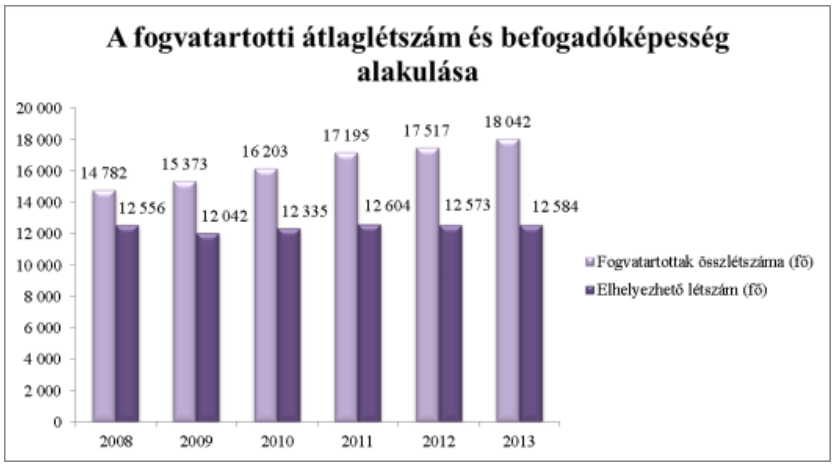
- 143 % on 31 December 2013[2]
- 137 % on 31 December 2012[3]
- 137 % on 31 December 2011[4]
- 133 % on 31 December 2010[5]

The graph on the right shows the trend of the annual average rate of overcrowding in the prison system.



6. In the past five years the number of places holding detainees has not significantly increased. In 2013 only 28 more places were available for detainees than in 2008.

The NPA's adjacent graph[6] shows the average number of the inmates and the capacity of the whole prison system. It can be observed that the number of inmates (shown with light purple colour) continuously rises, but the number of places provided for the detainees (shown with dark purple colour) has stagnated in the past five years. According to the statutory regulation defining the envisaged minimum moving space for detainees, 12,584 persons could be placed lawfully however, the number of detainees was 18,042 at the end of the year 2013.



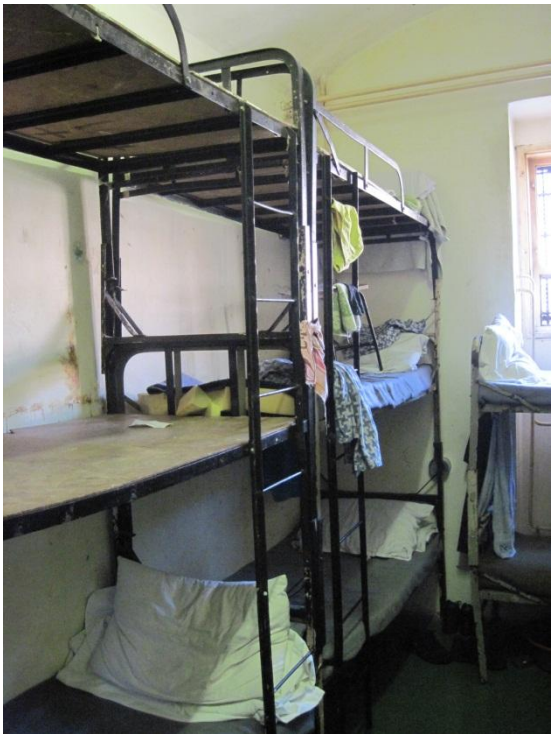
7. In certain prisons, the rate of overcrowding exceeds 200%,[7] meaning that the authorities place more than twice as many persons as they lawfully could.

8. Similar experiences were described in the 2013 CPT Report in relation to the Sopronkőhida Prison and the Somogy County Prison: "Not surprisingly, overcrowding was evident in the cells seen by the delegation (e.g. ten inmates sharing a cell of some 27 m², including the space taken up by the toilet, at Somogy County Prison; three inmates in a cell of about 8 m² at Sopronkőhida Prison). At Sopronkőhida Prison, a large number of cells were already substandard for single occupancy (i.e. as small as 5 m², including the in-cell toilet, and with no more than 1.5 m between the walls) and were in fact accommodating two inmates [...]. It

[2] See: http://www.bvop.hu/download/szamok,tenyek_2013.doc/szamok,tenyek_2013.doc p.3.
[3] See: http://www.bvop.hu/download/szamok,tenyek_2012_javjav.doc/szamok,tenyek_2012_javjav.doc p.4.
[4] See: http://www.bvop.hu/download/szamok,tenyek_2011.doc/szamok,tenyek_2011.doc p.4.
[5] See: http://www.bvop.hu/download/szamok_tenyek_2010.doc/szamok_tenyek_2010.doc p.5.
[6] See: http://www.bvop.hu/download/szamok,tenyek_2013.doc/szamok,tenyek_2013.doc p.2.
[7] Information provided by the NPA to the press on 22 May 2012, see: http://www.metropol.hu/itthon/cikk/889764

should be added that many inmates were accommodated in such conditions for up to 23 hours a day and for years on end."[8]

9. Photos taken by the prison monitors of the Hungarian Helsinki Committee in the Bács-Kiskun County Penitentiary Institution[9] illustrate well what conditions may prevail in those institutions that were built around the end of the 19th century and are still in use (the first photo also shows that in the most overcrowded penitentiaries the use of triple bunkbeds is far from unusual). According to the monitors in some cells of this institution the moving space is so small that some of the inmates have sit on the toilette cover while eating.



[8] CPT Report, § 79.
[9] See: http://helsinki.hu/wp-content/uploads/HHC-jelentés-intézet-válaszával-BVOPmegjegyzéseivel-végleges-anonimizálva.pdf

10. A similar situation was discovered in the Baranya County Penitentiary Institution by the monitors of the HHC in August 2013 as it is shown on the photos below.[10]

11. It has to be noted that the NPA has ordered the avoidance of using triple bunkbeds recently but penitentiary governors are sometimes under the necessity to accommodate inmates on the third level of the bunkbeds because of the excessive overcrowding.

12. A sign that the Hungarian Government does not look for a short-term solution to the problem of overcrowding is shown by the amendment of the provisions regulating the placement of detainees. Before 2010 the statutory regulation had conclusively prescribed for decades that the number of people to be placed in a cell shall be defined in a way that each inmate has 6 m3 of air space the net moving space shall be 3 square meters for male and 3.5 square meters for female detainees.[11] Seeing that this provision will not be enforceable, the Government amended the provision which now states that this moving space shall only be guaranteed "if possible", as a result of which the penitentiary institutions at least formally do not violate the directly applicable legal norms.

13. This amendment has been severely criticised by the CPT: "The delegation also learned with concern that, following a 2010 amendment to the rules on enforcement of prison sentences and pre-trial detention, the observance of 3 m2 of living space per male prisoners and of 3.5 m2 of living space per juvenile or women in cells (not counting floor space taken up by cell equipment) was no longer a strict legal requirement but more an objective. [...T]his may well have led to a trivialisation of the unacceptable situation that overcrowding generates in prison and thereby undermines efforts to combat the phenomenon. [...] The Committee also recommends that strict minimum legal requirements be reintroduced as regards living space per inmate in prison cells."[12]

14. It has to be noted however that 27 October 2014 the Constitutional Court found these provisions violating the Constitution and international law and squashed them from 31 March

[10] See: http://helsinki.hu/wp-content/uploads/MHB_jelentes_Baranya_Megyei_Bv_Intezet_2013_vegleges.pdf
[11] Decree 6/1996. (VII. 12.) of the Minister of Justice on the Rules of Implementing Imprisonment and Pre-trial detention [6/1996. (VII. 12.) IM rendelet a szabadságvesztés és az előzetes letartóztatás végrehajtásának szabályairól], hereafter: Decree 6/1996, Article 137.
[12] CPT Report, §§ 37, 39 and 40.

2015. Notwithstanding the decision, the 144% average rate of overcrowding will surely not be decreased to 100% by the end of March next year, therefore the problems remains acute.

II. The balancing program of the NPA

15. The Government offers the "balancing program" as one solution for the overcrowding of prisons in its action plan. In the framework of the balancing program the NPA re-allocates prisoners nationwide to ensure some more even distribution of overcrowding in the prisons. While the objective of this program is to be welcome, it has rather negative "side effects", while not ensuring a long-term solution. As the CPT pointed out: "insofar as the overcrowding »balancing« process is not an effective long-term response and generates immediately a number of serious problems for the prison management, staff and prisoners. The inmates spend a significant amount of time being transferred from one establishment to another, which leads to organisational difficulties. Moreover, prisoners were frequently held far away from their families and, as a result, suffered in practice from further restrictions on visits. This has led to tension between staff and inmates, as well as among prisoners themselves."[13]

A. Family visits in penitentiary institutions

16. The legal framework defines the minimum levels of the entitlements for detainees. While it is true that prison governors may deviate from these levels positively, with the present degree of overcrowding, the majority of penitentiary institutions provide the legally prescribed minimum, which is far from sufficient in many respects.

17. Under Article 36 of the Law-Decree 11 of 1979 on the Implementation of Sanctions and Measures (hereafter: Law-Decree), the minimum number of family visits is one per month. In terms of Decree 6/1996 (VII. 12.) of the Minister of Justice on the Rules of Implementing Imprisonment and Pre-trial detention (hereafter: Decree 6/1996), the length of visits is determined by the governor, and shall not be less than 30 minutes. The maximum number of visitors is four (two adults and two children). Most governors allow one hour per month, longer and more frequent visits are rare, which does not meet the international standards concerning contacts with the outside world.

18. It needs to be highlighted in this regard that in the case István Gábor Kovács v. Hungary, the ECtHR concluded (§ 38) that the statutory minimum for family visits may not be sufficient in the case of all inmates to satisfy the requirement to respect private and family life: "As regards necessity in a democratic society, the Court notes that the Government have not put forward any argument for justification of the restriction beyond a reference to the applicable section of the Law-Decree. The Court notes with concern that the latter restricts the frequency of family visits to one per month in a general manner, without affording sufficient flexibility for determining whether such limitations were appropriate or indeed necessary in each individual case."

19. The Government of Hungary states in its action plan that the house rules defining the number of family visits in the given case have been already amended. It also claims that more visits are available upon request. Even though the house rules have been changed in the penitentiary where the Applicant was held, the statutory regulation remained the same, moreover Act 240 of 2013 on the Implementation of sanctions, measures, coercive measures and confinement (hereafter: Act on the Implementation of Imprisonment) replacing the Law-Decree and entering into force 1 January 2015 will not change practically the present entitlement for detainees because the new code – very similarly to the Law-Decree being in force actually – provides that the detainee may receive visitors at least once in a month for a minimum of 60 and a maximum of 90 minutes. Any further visits may be allowed by penitentiary governors or be awarded if the detainee merits them.

[13] CPT Report, § 39.

20. Therefore it can be easily seen that the Government does not intend to increase the low number of family visits, it only prescribes one obligatory occasion to be provided in spite of the fact that this has been criticized in the István Gábor Kovács decision of the Court.

III. Construction of new prison places

21. Another Government solution to mitigate overcrowding is the building of new prisons or renovating old closed-down units. As stated in the CPT Report, the Hungarian authorities claimed in the spring of 2013 that they were planning to increase the capacity of the prison estate with 250 more places by the end of 2013. However, as it can be seen from the annual statistics of the NPA, between December 2012 and December 2013 the number of places had increased by only 11 (from 12,573 to 12,584).[14]

22. According to information from the Ministry of Interior (provided upon an FOI request from the HHC), in 2014 the capacity of penitentiary institutions will not be increased at all. In 2015, the Ministry of Interior claims, 764 places will be constructed. In 2016 the capacity of a Northern-Hungarian prison will be increased by 500 places. From the construction plans it seems that the Government itself does not expect a significant decrease in the prison population.

23. In 2013, the penitentiary system held 525 more inmates than in the year before. Comparably between 2012 and 2013 the difference was 322, but in the previous two years the number of inmates increased by 922 per year. So if we count with the average increase of the three years (613), we have to conclude that the construction and renovation of new prison places will not at all solve the problem: according to the construction plans of the Government by the end of 2016 1,264 places will be created. If the number of inmates merely grows with the average pace of the past 3 years – 613 each year, therefore 1,839 altogether – than the overcrowding will be even higher than it is actually.

24. It has to be mentioned as well that negotiations have been launched so that the Government would be able to place more detainees in the two penitentiary institutions built and operated in a public-private-partnership construction. (At the moment, the contract between the Sstate and the management of such prisons sets out an extremely high price to be paid by the State if more inmates are placed in these prisons than their official capacity. The negotiations aim at the reducing of the price.) If negotiations are successful, in 2015 720 more inmates could be received by the two concerned institutions for a relatively low price. As a consequence the overall overcrowding may be eased a little bit, but these two institutions would become similarly overcrowded to all other penitentiaries in the country.

25. If we add this figure to the above calculation, 1,984 new places will be established by the end of 2016 and "only" 1,839 detainees will have to be placed so the level of overcrowding will decrease, but even under these circumstances only negligibly.

26. It has to be underlined as well that newly constructed prison places entail enormous staff, maintenance, running, etc. costs, which will probably cause further serious budgetary problems.

27. The plans of the Government and the simplified calculation clearly show that the construction of new prisons and/or units is a very time consuming exercise, which may offer some kind of a solution only in the long run (3-5 years), but only if the increase of the prison population comes to a halt.

28. This has been emphasised by numerous international organisations starting from the Human Rights Committee of the United Nations, which warned in 2010 that "the State party should take concrete steps to improve the treatment of prisoners and conditions in prisons and

[14] See: http://www.bvop.hu/?mid=77&cikkid=2168 (although altogether 159 new places were constructed in three prisons, see: NPA Yearbook 2013, p. 41, at: http://www.bvop.hu/download2/evkonyv2013.pdf)

detention facilities in line with the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners. In this regard, the State party should consider not only the construction of new prison facilities but also the wider application of alternative non-custodial sentences."[15]

29. The same has been put forth by the CPT Report: "The CPT also wishes to emphasise once again that providing additional accommodation cannot on its own offer a lasting solution. The only viable way to control overcrowding is to adopt policies designed to limit or moderate the number of persons sent to prison. The highest priority should be to ensure that imprisonment really is the ultimate sanction."[16]

IV. Alternative measures

30. Authorities seem reluctant to use even those few alternatives to incarceration that have been introduced recently: for example the number of house arrests has remained very low compared to pre-trial detentions in spite of the introduction of electronic tagging in July 2013.

31. As far as the underuse of alternatives is concerned, it can be quoted for instance that on 31 December 2013, out of the 18,042 detainees, 5,053[17] (28%) were remand prisoners, and although electronic tagging has been applicable to secure the house arrest of defendants awaiting trial, the number of suspects in pre-trial detention and house arrest was 2,274 and 154 (!) respectively on 31 January 2014.[18] Nine months later on 30 September 2014, the figures were similar: 2,119 suspects were in pre-trial detention and 138 in house arrest.

32. As statistics of the Prosecutor's Office[19] show, the nominal number of pre-trial detainees has been growing between 2008 and 2013. In 83% of the cases, when the police initiates it, the prosecutor motions the detention, and in 91.4% the judges comply with the motion, and order the pre-trial detention of the defendant.

33. The overuse of pre-trial detention was also pointed out by the UN Working Group on Arbitrary Detention (hereafter: UNWGAD) in its end-of-mission statement of 2 October 2013: "we consistently received information that the excessive use of pre-trial detention is prevalent throughout the criminal justice system in the country. [...] We observed that even with legislation providing for alternative measures to detention, the recourse to use detention as a first resort rather than the last, has been commonplace. Hungary's prison population is currently at a 140 per cent overcrowding ratio, much of which can also be attributed to the common use of detention for those in the pre-trial regime. [...T]he prolongation process of the detention also raises serious questions in that it often leads to unnecessary and lengthy periods. The issue of proportionality was not often respected. [...] Although alternatives to detention are stipulated in the relevant legislation, the »culture of detaining« a person while pending trial seemed to be evident throughout the country. [...] For example, where home arrest can be justified and effectively implemented, the Working Group was informed that the person was placed in pre-trial detention nonetheless. [...] Over 90 per cent of cases that were brought before the court in relation to pre-trial detention were approved in favour of the prosecution".[20]

34. Nevertheless, the Ministry of Interior has not provided any training, it did not promote – as the Government declares in the action plan submitted – the use of house arrest among the judiciary.

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[15] HRC Concluding Observations, § 16.
[16] CPT Report, § 39.
[17] http://www.bvop.hu/?mid=77&cikkid=2168
[18] Data from the Public Prosecutor's Office: http://www.mklu.hu/pdf/kenyszint20140131.pdf
[19] See: http://www.mklu.hu/repository/mkudok2832.pdf p. 49.
[20] See: http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13816&LangID=E

35. According to the written information provided by the Ministry of Justice, their colleagues have already held two two-hour lectures for criminal law judges on the case law of the ECtHR in general, including the benefits of alternative measures. However, these training sessions seem to be part of the general training curriculum, with no direct relation to the presently discussed cases. Therefore, one may have the impression that the Government did not carry out any specific action to train the judiciary in order to promote the wider use the house arrest. HHC has received no information about the training of the prosecution. The question arises as well, why government officials – representing the State violating the Convention – and why not lawyers representing the applicants hold these lectures.

36. The Government also declares in the action plan submitted to the Committee of Ministers that rules and conditions of the house arrest will be worked out thoroughly. According to the information provided by the Ministry of Justice, comparative studies have been prepared on the use of electronic tagging and in the course of the codification of the new Code of Criminal Procedure (CCP), the new rules of house arrest will be set out. The Ministry of Justice admits however that the studies were prepared by the Police, the Ministry does not possess these, they have only heard about their existence but their colleagues are not familiar with the exact content, only some of the findings are known by them.

V. Criminal policy contributing to future overcrowding

A. Stricter Criminal Code

37. In 2014 no thorough reforms have been introduced or announced in order to ameliorate the overcrowding rates. On the contrary, the Government continued its harsh criminal policy, the new Criminal Code (Act C of 2012) entered into force 1 July 2013 aggregates numerous sanctions, maintains life imprisonment without parole and the three-strike provisions.

38. Under Hungarian criminal law, the offence shall be adjudicated according to the provisions that were in effect at the time of the perpetration (unless the provisions in force at the time of the adjudication are more favourable for the defendant). This means that it takes time for any restriction in criminal law to have an impact on the jurisprudence and the sentencing practices, which in turn entails that the restrictive amendments of 2009, 2010, and most recently 2013 have a delayed effect on the trends, making it likely that the increase in prison population will not stop for another 2-3 years. This view is shared by most stakeholders the CPT consulted during its 2013 visit: "Most of the delegation's interlocutors, including senior prison officials, indicated that the situation was likely to worsen with the entry into force, in July 2013, of a number of new criminal provisions which may well result in an even higher number of persons being sent to prison and/or being imprisoned for far longer terms."[21]

B. Median of the punishment

39. In 2010 the Government introduced a new provision into the Criminal Code, which sets out a significantly stricter way to count the median of the imprisonment to be imposed by the judge. If the judge wants to impose a punishment more lenient than the median s/he has to thoroughly reason the decision. Because of the Criminal Code's characteristics described under § 38, consequences of the 2010 modification will only show later on. At a conference held on 29 October 2014, the President of the Szeged Regional Court of Appeal mentioned a case of robbery where he had imposed 9 years of imprisonment, whereas in the previous practice the average punishment for such an offence would have been around 3 years.

40. To be fair, it has to be noted as well that parallel to the above-mentioned aggravation, the provisions regulating the time of release have become somewhat more beneficial for the detainees. However, it is difficult to predict how these new rules of conditional release will

[21] CPT Report, § 37.

influence the prison population, but it is certain that while the consequences of the harsher sentencing policy are very tangible, it is uncertain (and also depending on the approach of the penitentiaries and judges making the decision on release) whether a high number of detainees will be able to benefit from the more favourable rules since their application depends on the behaviour and merits of the inmate, and also on how the penitentiaries and the penitentiary judge perceives these. Overcrowding causes serious tensions between prisoners and the staff contributing to conflicts, it narrows down the possibilities of working in the prison or of participating in meaningful activities, therefore the detainees definitely have less chance to merit the early release.

C. Actual life sentence

41. According to the below graph of the NPA, at the end of last year altogether 46 actual lifers (shown with the lightest purple line on the graph) were detained in the Hungarian prison system, 29 of them serving a final and binding sentence (shown with the darkest purple colour) (and 17 of them having a first instance decision). As it is demonstrated by the statistics of the NPA,[22] the number of actual lifers heavily sheers: while in the 12 years between 1999 (the introduction of life sentence without parole) and 2011, only 19 persons were sentenced to life without the possibility of parole, between 2011 and 2013 this number more than doubled to 46. Even though the number of these kinds of convicts is still relatively low, they put a significant burden on the prison system.

42. This argument is legitimate even if the Ministry of Justice has just presented a draft law to the Parliament[23] on the possibility of parole. The imprisonment of actual lifers will only be reviewed after 40 years and the parole will be based on the discretional decision of the President of Hungary. In the recent case of László Magyar v. Hungary (Judgement of 20 May 2014; Application no.: 73593) the ECtHR concluded that the institution of presidential parole does not allow actual lifers "to know what he or she must do to be considered for release and under what conditions". So despite the amendment of the law, the Hungarian regulation remains in breach of the ECHR standards. In addition, based on the extremely low number of paroles given by the President of Hungary and given the fact that the first review will take place in 2039 further increase in the number of actual lifers can be predicted in the forthcoming years.

[22] See: http://www.bvop.hu/download/szamok,tenyek_2013.doc/szamok,tenyek_2013.doc p.2.
[23] See: http://www.parlament.hu/irom40/01707/01707.pdf

D. Three strike law

43. Another illustration of the increasing strictness of sentencing policies is the 2010 introduction of the "three strikes rule", according to which in certain cases judges are obliged to impose a life sentence. The pertaining provisions were made even stricter by the New Criminal Code which prescribes that in certain instances it is mandatory for judges to impose a life sentence without the possibility of parole on habitual violent recidivists.

44. In July 2014 the Constitutional Court squashed one certain version of the three strike law, but offenders committing violent crimes three times are still to be sentenced to life imprisonment without parole.

E. Petty offences punished with confinement

45. Another reason for the increasing overcrowding is the widening of the range of misdemeanours (petty offences) punishable with confinement. Before 2010, petty theft was not punishable with deprivation of liberty, but an amendment of the pertaining law in force at the time, rendered petty theft along with other minor transgressions punishable with incarceration. Act II of 2012 on Misdemeanours, the Misdemeanour Procedure, and the Misdemeanour Registry System (hereafter: "Law on Misdemeanours") upheld the list of offences punishable with confinement as extended in 2010, and made it possible to apply confinement for the third misdemeanour within a 6-month period to any petty offence, even if none of the three misdemeanours committed would be otherwise punishable by confinement.[24] Furthermore, the Law on Misdemeanours allows for automatically changing a fine or community service to confinement without hearing the offender in case he/she fails to pay the fine or carry out the work,[25] which violates the ECHR norms on the right to a fair trial.

46. As confinement shall be carried out in a penitentiary institution,[26] this has further increased overcrowding, and is likely to continue to have a negative impact on the situation, as admitted by the Minister of Interior in an interview. To the question "Will the Government adhere to the policy of »we should lock up everyone for a long time«, as a result of which the already overcrowded penitentiaries are becoming more and more overcrowded, or will alternative solutions be also introduced?", the Minister replied: "The prisons are overcrowded, because the authorities are working well, more efficiently than before, and because some amendments have introduced sanctions that have not existed before."[27]

47. The problem of confinement for misdemeanours was also raised by the UNWGAD, which concluded in its end-of-mission statement that "the Working Group interviewed a number of detainees who were serving time in confinement for offences such as not wearing a seatbelt, having a broken bicycle light, jay walking, walking across the street under the influence of alcohol and so forth. [...] It seemed that an automatic conversion of a fine to confinement took place without the offender being in court to challenge the confinement. [...] We note that in 2012, there has been a drastic increase in the conversion of non-payment of fines to confinement. The principle of proportionality is necessary to be applied in these situations and importantly, alternative measures to confinement such as community work should be utilised."[28]

[24] Law on Misdemeanours, Article 23
[25] Law on Misdemeanours, Articles 12 and 15
[26] Law on Misdemeanours, Article 139
[27] See: http://nol.hu/belfold/20130925-unios_minta_lehet_a_kozmunka?ref=sso
[28] See: http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13816&LangID=E

VI. Recommendations

48. For the reasons above the HHC respectfully recommends the Committee to call on the Government of Hungary to:

a) Reduce the rate of overcrowding to 120% until the end of 2015 and to 100% until the end of 2016.

b) Elaborate a mechanism determining the conditions based on which inmates are released in case the 100% capacity of the prison system and any individual prison is exceeded.

c) Abolish those elements from its criminal policy that violate ECtHR norms, such as life sentence without a parole.

d) Revise the Law on Misdemeanours and reconsider the range of acts punishable with confinement.

e) Promote within the judiciary and the prosecution that imprisonment and other forms of deprivation of liberty are really the last resort.

f) Promote that members of the judiciary and the prosecution receive personal and real life experience on detention conditions and side effects of incarceration.

g) Provide training for the judiciary and the prosecution on the nature and international practice of coercive and alternative measures including the relevant case law of the ECtHR and recommendations of the CPT. Involve civil society actors in the process.

h) Support that the head of the courts initiate a survey and assess the results on the application of pre-trial detention.

i) Increase the obligatory number of family visits to be provided in the new Act on Implementation of Imprisonment.

Sincerely yours,

András Kádár
co-chair
Hungarian Helsinki Committee